

HORNBY ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. 178

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS the Hornby Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the Hornby Island Local Trust Area, pursuant to the *Islands Trust Act*;

AND WHEREAS Section 483 of the Local Government Act and Section 29 of the *Islands Trust Act* permit the Local Trust Committee to enter into a housing agreement;

AND WHEREAS the Hornby Island Local Trust Committee wishes to enter into a Housing Agreement;

NOW THEREFORE the Hornby Island Local Trust Committee enacts in open meeting assembled as follows:

1. This Bylaw may be cited for all purposes as “Hornby Island Housing Agreement Bylaw No. 178, 2024”.
2. Any one Trustee of the Hornby Island Local Trust Committee are authorized to execute an agreement in the form attached to this Bylaw with the HORNBY ISLAND HOUSING SOCIETY, a society incorporated under the laws of the province of British Columbia under incorporation number S-0028556.

READ A FIRST TIME THIS 1ST day of NOVEMBER, 2024

READ A SECOND TIME THIS 1ST day of NOVEMBER, 2024

READ A THIRD TIME THIS 1ST day of NOVEMBER, 2024

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS

20TH day of NOVEMBER, 2024

ADOPTED THIS 18TH day of DECEMBER, 2024

CHAIRPERSON

SECRETARY

Housing Agreement and Section 219 Covenant
(Section 438 Local Government Act and Section 219 Land Title Act)

THIS AGREEMENT DATED FOR REFERENCE THE 1st OF November, 2024 is BETWEEN:

HORNBY ISLAND HOUSING SOCIETY, a society incorporated under the laws of the province of British Columbia under incorporation number S-0028556.

(the “Owner”);

AND:

HORNBY ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Islands Trust Act*, having an office at 2nd Floor, 1627 Fort Street, Victoria, B.C., V8R 1H8

(the “Trust Committee”)

AND:

M’AKOLA HOUSING SOCIETY, a society incorporated under the laws of the province of British Columbia under incorporation number S-18870.

(the “Lessee”)

WHEREAS:

- A. The Owner is the registered owner of the Lands situated at 5040 Central Road and legally described as:

PID 028-221-401
LOT 1, SECTION 11, HORNBY ISLAND, NANAIMO DISTRICT, PLAN VIP87990

(the “Lands”);

- B. The Owner intends to construct on the Lands a residential development that will include Affordable Housing Units (hereinafter defined) to rent, by way of a Tenancy Agreement, at an affordable rate to Qualified Renters (hereinafter defined);
- C. The Trust Committee may, pursuant to Section 29 of the *Islands Trust Act* and Section 483 of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure and availability to specified classes of persons of dwelling units located on those lands;

- D. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Trust Committee in respect of the use of land;
- E. The Owner and the Trust Committee wish to enter into this Agreement to provide affordable housing on the Lands on the terms and conditions of this Agreement and to restrict the use of the Lands on the terms and conditions of this Agreement, to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and
- F. The Trust Committee has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement.

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the Trust Committee to the Owner (the receipt of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Trust Committee and the Owner agree, as covenants granted by the Owner to the Trust Committee under Section 219 of the *Land Title Act*, and as a housing agreement between the Owner and the Trust Committee under Section 483 of the *Local Government Act*, as follows:

Article 1

a. Definitions – In this Agreement:

“Affordable Housing Funder” means BC Housing, Canada Mortgage and Housing Corporation or other agency that provides a grant or preferential rate loan to support the development of Affordable Housing Units on the Lands;

“Affordable Housing Unit” means a studio, 1 bedroom, 2 bedroom or 3 bedroom Dwelling Unit on the Lands in respect of which the construction, tenure, rental and occupancy are restricted in accordance with sections b through e of this Agreement;

“Annual Household Income” means the combined gross income of all adult members of a Household, as shown on line 150 of the preceding year’s T1 General Income Tax and Benefit return;

“BC Housing” means the British Columbia Housing Management Commission;

“Funding Agreement” means an agreement entered into or to be entered into between an Affordable Housing Funder and the Owner or the Lessee that governs the allowable rental rates for the Dwelling Units on the Lands, and/or the eligibility criteria for Qualified Renters;

“Dwelling Unit” means a dwelling unit as defined in the Hornby Island Land Use Bylaw No. 150, 2014, as amended or replaced from time to time;

“Community Housing” means dwelling units as defined in the Hornby Island Land Use Bylaw No. 150, 2014, as amended or replaced from time to time;

“Essential Service Provider” means a person who provides services that are essential to supporting life, health, public safety and basic societal functioning. These include, but are not limited to, workers in health care, education, child and elder care, emergency services, tradespersons in areas of critical infrastructure.

“Household” means an applicant, spouse (if applicable) and dependent children (if applicable), and for Affordable Housing Units with two (2) or more bedrooms has a minimum of two (2) persons that must

include at least one dependent child.

“Housing Income Limits” means the maximum gross household income for eligibility in an affordable housing program (for each category of dwelling unit), based on figures established by the Canada Mortgage and Housing Corporation, and are intended to reflect the minimum income required to afford appropriate accommodation in the private market, as published by BC Housing from time to time;

“Lands” means the parcel of land legally described as PID 028-221-401 LOT 1, SECTION 11, HORNBY ISLAND, NANAIMO DISTRICT, PLAN VIP87990;

“Lessee” means the M’akola Housing Society;

“Lessor” means the Hornby Island Housing Society;

“Low and Moderate Income Limits” means the Low and Moderate Income Limits as published by BC Housing from time to time;

“Operating Agreement” means an agreement entered into or to be entered into between an Affordable Housing Funder and the Owner or the Lessee of the Lands that relates to the management of the building containing the Affordable Housing Units, as same may be amended from time to time at the request of the Affordable Housing Funder;

“Qualified Renter” means a Household which: (i) is comprised of at least one member who meets the eligibility criteria in Schedule B; and (ii) meets the eligibility criteria of the Affordable Housing Funder(s) if an Operating Agreement or Funding Agreement is in place;

“Residential Tenancy Act” means the *Residential Tenancy Act* (British Columbia); and

“Tenancy Agreement” means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*.

b. Agreement over the Lands – Pursuant to section 219 of the *Land Title Act* and section 483 of the *Local Government Act*, the Owner covenants and agrees that the Lands may be used only in accordance with the following conditions:

- i. the Lands must not be used, and no building or structure may be constructed on the Lands except in accordance with any development permit and any Siting and Use Permit issued by the Trust Committee.
- ii. the Lands must at all times be used and occupied in compliance with all statutes, laws, regulations, orders of any authority having jurisdiction, and this Agreement;
- iii. it will design, construct and maintain in a reasonable state of repair the Affordable Housing Units on the Lands in accordance with the terms of this Agreement;
- iv. the Lands must not be used or occupied for residential purposes unless the buildings are constructed to meet:
 1. the performance requirements of the BC Energy Step Code 3 energy efficiency standards established by the British Columbia Building Code Regulation, B.C. Reg. 264/2012 (the “Performance Standards”) of the *Building Act* (BC) , or
 2. if required by an Affordable Housing Funder, a different energy performance target,

and

3. the Owner has provided to the Trust Committee confirmation from a qualified professional that the building has been constructed and is operating in accordance with item 1 or item 2, as the case may be;

c. Affordable rental housing eligibility - The Owner covenants and agrees that the Affordable Housing Units on the Lands will only be occupied under all of the following criteria:

- i. either:
 - a. if the Owner or Lessee has an Operating Agreement with an Affordable Housing Funder under which the Affordable Housing Funder has agreed to provide funding for the construction or operation of affordable housing on the Lands, the Household must meet the income and/or non-financial criteria imposed on the occupancy of the relevant Affordable Housing Unit on the Lands established by such Affordable Housing Funder.; or
 - b. where section c.i.a. above does not apply (for clarity, where there is no Operating Agreement with an Affordable Housing Funder in place), the Household's Annual Household Income must be less than or equal to BC Housing's Housing Income Limits.
- ii. the Household will occupy the Affordable Housing Unit as their permanent, principal, and sole residence;
- iii. the Household is comprised of at least one Qualified Renter; and
- iv. the Household complies with application criteria established by the Owner acting reasonably as a responsible landlord such as credit and reference checks or property rules regarding smoking and pets.

and The Owner and Lessee covenant and agree to:

- v. include in every Tenancy Agreement a prohibition on subletting, including short-term vacation rentals, and a provision entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* in the event of any breach of that prohibition;
- vi. specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to the Affordable Housing Unit, and provide to each tenant, upon their request, a copy of this Agreement; and

d. Rental rates - The Owner and Lessee covenant and agree that:

- i. the rent payable by a Qualified Renter for an Affordable Housing Unit will be determined by the Affordable Housing Funder while an Operating Agreement is in place between the Affordable Housing Funder and the Owner, or between the Affordable Housing Funder and the Lessee. The Lessee shall remain in compliance with the Operating Agreement while it is in place.
- ii. Following the expiry or termination of the Operating Agreement, rent payable by a Qualified Renter will be determined by the Owner or Lessee, and must not exceed 30% of one twelfth of the Qualified Renter's Annual Household Income or such lesser amount as would be required to meet the ongoing operating expenses of Owner, acting reasonably as a responsible landlord.
- iii. it will not require any tenant under a Tenancy Agreement to pay any extra charges or fees for use of any well or septic system, or property taxes. For clarity, this limitation does not apply to cablevision, telecommunications, laundry, or gas or electricity utility fees or charges.

- e. **Order to Comply** – If the Owner is in default of the performance or observance of this Agreement, the Trust Committee may give the Owner a notice of default requiring the Owner to comply with this Agreement within the time stated in the notice and in accordance with notice requirements upheld by the Residential Tenancy Act. The Owner agrees that any breach or default in the performance of this Agreement on its part must be corrected, to the satisfaction of the Trust Committee, within the time stated on the notice of default provided to the Owner by the Trust Committee.
- f. **Statutory Declaration from Owner** – The Owner or Lessee shall deliver to the Trust Committee by the end of January of each year, a completed statutory declaration, substantially in the form attached as Schedule “A”, sworn by the Owner or Lessee, in relation to the Affordable Housing Units. The Owner or Lessee irrevocably authorizes the Trust Committee to make inquiries it considers necessary and reasonable in order to confirm compliance with this Agreement.
- g. **Management** – The Owner covenants and agrees to furnish good and efficient management of the Lands. If and when the Trust Committee has reasonable grounds to believe that a continuing breach of this Agreement exists, the Trust Committee may authorize its representatives to inspect the Lands at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act* and subject to the concurrent delivery of such a notice to the Owner.
- h. **No Transfer** – The Owner must not (except by way of Tenancy Agreement, mortgage, covenant, right of way, or easement) transfer the Lands, other than to another non-profit organization or society incorporated under the *Societies Act*, having as its objective the management of affordable housing, or the Provincial Rental Housing Corporation, unless it obtains the prior written consent of the Trust Committee.
- i. **Society Standing** – The Owner must maintain its standing as a society under the *Societies Act*, and must not amend its Constitution in any manner that would prevent, or adversely affect, the ability of the Owner to perform its obligations under this Agreement.
- j. **Specific Performance of Agreement** – The Owner agrees that the Trust Committee is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement, in view of the public interest in restricting the occupancy of the Affordable Housing Unit. The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Trust Committee’s Land Use Bylaw, as amended from time to time.
- k. **Assignment** – The Owner acknowledges that the Trust Committee may delegate or assign the administration and management of this Agreement to a third party, and, in that event, any reference in this Agreement to the Trust Committee shall be interpreted as a reference to that party provided that the Trust Committee has so advised the Owner.
- l. **Indemnity** – The Owner shall indemnify and save harmless the Trust Committee and each of its elected officials, officers, directors, employees, and agents from and against all claims, demands, actions, loss, damage, costs, and liabilities for which any of them may be liable by reason of any act or omission of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is at law responsible, including breaches of this Agreement.
- m. **Release** – The Owner releases and forever discharges the Trust Committee and each of its elected officials, officers, directors, employees, and agents and each of their heir, executors, administrators, personal representatives, successors and assigns from all claims, demands, damages, actions, or causes of action arising out of the performance by the Owner of its obligations under this Agreement, or the enforcement of this Agreement.

- n. **Trust Committee Powers Unaffected** – This Agreement does not limit the discretion, rights, duties or powers of the Trust Committee under any enactment or the common law, impose on the Trust Committee any duty or obligation, affect or limit any enactment relating to the use or subdivision of the Lands, or relieve the Owner from complying with any enactment.
- o. **No Public Law Duty** – Wherever in this Agreement an act, determination, consent, approval or agreement of the Trust Committee is provided for, such act, determination, consent, approval or agreement may be done or made in accordance with the terms of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice shall have any application.
- p. **No Waiver** – No condoning, excusing or overlooking by the Trust Committee of any default under this Agreement, nor any consent, approval, or agreement whether written or otherwise shall be taken to operate as a waiver by the Trust Committee of any subsequent default or of the necessity for further consent, approval or agreement in respect of a subsequent matter requiring it under this Agreement, or in any way to defeat or affect the rights or remedies of the Trust Committee.
- q. **Arbitration** – Any matter in dispute between the parties under this Agreement, including any disputes as to whether a particular individual is eligible to occupy a Affordable Housing Unit, must be referred to a single arbitrator if the parties can agree on one, and otherwise to three arbitrators, one to be appointed by each of the parties and the third by those two so appointed, and the matter must be resolved in accordance with the provisions of the *Arbitration Act* of British Columbia.
- r. **Notice on Title** – The Owner acknowledges and agrees that this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 483 of the *Local Government Act*, and agrees that the Owner will register a notice of this Agreement against title to the Lands.
- s. **Covenant Runs with the Land** – Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the Trust Committee in accordance with section 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including, by subdivision or by strata plan.
- t. **Limitation on Owner's Obligations** – The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.
- u. **Amendment** – This Agreement may not be modified or amended except by bylaw of the Trust Committee, upon an agreement in writing between the Trust Committee and the Owner.
- v. **Notices** – Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Owner or the Trust Committee, as the case may be, at the address first above written, or to any other address of which either the Owner or the Trust Committee may advise the others in writing in accordance with this paragraph. Notice to the Trust Committee must be addressed to the Secretary of the Islands Trust. If given in person or by facsimile transmission, such notice will be deemed to be received when delivered and, if mailed, such notice will be deemed to be received only when actually received by the party to whom it is addressed.
- w. **Enurement** – This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.

- x. **Remedies Cumulative** – The remedies of the Trust Committee specified in this Agreement are cumulative and are in addition to any remedies of the Trust Committee at law or in equity. No remedy shall be deemed to be exclusive, and the Trust Committee may from time to time have recourse to one or more or all of the available remedies specified herein or at law or in equity.
- y. **Severability** – Each covenant and agreement contained in this Agreement is, and shall be construed to be, a separate and independent covenant or agreement and the breach of any such covenant or agreement by the Owner shall not discharge or relieve the Owner from its obligations to perform. If any term or provision of this Agreement, or its application to any person or circumstance shall to any extent be found to be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
- z. **Joint and Several** – In the case of more than one owner, the grants, covenants, conditions, provisions, agreements, rights, powers, privileges and liabilities of the Owner shall be construed and held to be several as well as joint.
- aa. **Included Words** – Wherever the singular or the masculine is used in this Agreement, it shall be deemed to include the plural or the feminine, or the body politic or corporate, where the context or the parties so require.
- bb. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.
- cc. **Joint Venture** – Nothing in this Agreement shall constitute the Owner as an agent, joint venture or partner of the Trust Committee or give the Owner any authority or power to bind the Trust Committee in any way.
- dd. **Time of Essence** – Time is of the essence in this Agreement.
- ee. **Further Assurances** – The parties shall execute and do all such further deeds, acts, things and assurances as they reasonably require to carry out the intent of this Agreement.
- ff. **Priority** – The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Lands with priority over all financial charges, liens and encumbrances registered or pending at the time of application for registration of this Agreement.
- gg. **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

SCHEDULE "A"

OWNER STATUTORY DECLARATION

CANADA

IN THE MATTER OF A HOUSING AGREEMENT

PROVINCE OF BRITISH COLUMBIA

WITH THE HORNBY ISLAND LOCAL TRUST
COMMITTEE ("Housing Agreement")

I, _____, of _____, do solemnly
declare that:

1. I am the _____ [director, officer, employee] of the [Owner], the owner of the land known as _____, Hornby Island, legally described as: _____ (the "Lands")
2. I make this declaration to the best of my personal knowledge.
3. This declaration is made pursuant to the Housing Agreement registered against the Lands.
4. For the period from _____ to _____, the Affordable Housing Units were used only by Qualified Renters (as defined in the Housing Agreement).
5. At no time during the last year were any of the Affordable Housing Units used as a short-term vacation rental or sublet.
6. The rental payments charged for the Affordable Housing Unit were in compliance with the Housing Agreement.
7. No subletting of the Lands has been permitted.
8. I acknowledge and agree to comply with all of the Owner's obligations under the Housing Agreement, and other charges registered against the Lands and confirm that the Owner has complied with all of its obligations under these Agreements.
9. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at _____, British Columbia, this ____ day of _____.

A Commissioner for taking Affidavits
in British Columbia

Signature of person making declaration

SCHEDULE "B"

Eligibility Criteria for Tenancy for a Qualified Household

To be eligible for tenancy: an applicant must be 19 years or older, a member of the applicant Household, and must, in no particular order of priority, be either:

- i. A Hornby Island resident who has been living on Hornby Island for no less than one year;
- ii. A non-resident of Hornby Island who has been working on Hornby Island for an average of at least 20 hours per week year-round for no less than one year;
- iii. A non-resident of Hornby Island who has verifiable year-round work on Hornby Island as an Essential Service Provider starting within 60 days of the commencement of the tenancy;
- iv. A member of K'ómoks First Nation, who is or has been a resident of Hornby Island.

Where there are no applicants for a vacant Affordable Housing Unit who meet the foregoing eligibility criteria, and this would result in the Affordable Housing Unit being vacant for more than one month, eligibility for tenancy will be expanded to include Households with at least one member aged 19 years or older who, in no particular order of priority, is either:

- v. A former resident of Hornby Island who has lived away from Hornby Island for no more than seven consecutive years;
- vi. A Hornby Island resident who has been living on Hornby Island for less than one year;
- vii. A non-resident of Hornby Island who has been working on Hornby Island for an average of 20 hours per week for less than one year;
- viii. A member of K'ómoks First Nation, regardless of current location of resident or work;
- ix. A person who self-identifies as Indigenous

Where there are no applicant Households for a vacant Affordable Housing Unit who include at least one Household member who meet the foregoing eligibility criteria, and this would result in the Affordable Housing Unit being vacant for more than one month, eligibility for tenancy will be expanded to include any applicant 19 years of age or older who is permitted as a tenant by an Affordable Housing Funder.